

SENATE BILL 181

By Norris

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 4, Part 20, relative to excise tax, and Title
67, Chapter 4, Part 21, relative to franchise tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

() "Final return status" means the status of any person or taxpayer that has commenced the process of effecting a surrender of charter, withdrawal of qualification to do business in this state, merger, consolidation, liquidation, complete sale, transfer or distribution of assets, conversion, dissolution, or any similar event that results in, or is intended to result in, the taxpayer ceasing to exist, or no longer being subject to the tax imposed by this part, or no longer having any substantial remaining business or financial activity.

SECTION 2. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following as a new, appropriately designated subsection:

(h) Final return status shall apply to the first return that reflects any activity or event giving rise to such status, and shall apply to all subsequent returns filed by the taxpayer. The taxpayer shall file a return for each tax period during which the taxpayer is in final return status. This requirement shall include returns of taxpayers with any remaining assets, activity, equity, or proceeds; or with installment sales attributable to any Tennessee assets regardless of whether the entity has any remaining in-state activity.

SECTION 3. Tennessee Code Annotated, Section 67-4-2105(a), is amended by deleting the following language:

or under subsection (b)

SECTION 4. Tennessee Code Annotated, Section 67-4-2107(b)(1), is amended by deleting the following language at the end of the last sentence:

the methods of allocation set forth in subdivision (b)(2) shall be used.

and by substituting instead the following language:

the methods of allocation set forth in this part shall be used.

SECTION 5. Tennessee Code Annotated, Section 67-4-2107(b)(2), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 6. Tennessee Code Annotated, Section 67-4-2111(e)(3)(C), is amended by deleting the following language at the end of the last sentence:

the classification groupings enumerated in § 67-4-2013(a)(1)-(6) shall be used.

and by substituting instead the following language:

the classification groupings enumerated in § 67-4-2013(a)(1)-(7) shall be used.

SECTION 7. Tennessee Code Annotated, Section 67-4-2115, is amended by deleting the section in its entirety and by substituting instead the following:

§ 67-4-2115

(a) The franchise tax return shall be filed as provided in § 67-4-2015. On any return covering less than a twelve (12) month period, including the return of a taxpayer in final return status, but excluding any return based on a 52-53 week year, the franchise tax shall be prorated to cover the proportionate part of the year covered by the return. In the event the taxpayer's taxable year is closed within less than twelve (12) months of incorporation, formation, domestication, or commencing of business, the franchise tax of a domestic entity shall be prorated to cover the proportionate part of the year since the date of incorporation or formation, or the date of commencing business, whichever occurred first. The franchise tax of a taxpayer formed outside of Tennessee shall be prorated to cover the proportionate part of the year since beginning business in this state. On any return where the franchise tax is prorated, annualization of rent paid shall

be required when determining the minimum franchise tax measure under § 67-4-2108. Proration of the franchise tax and annualization of rent paid shall be computed by a fraction based on a days method.

(b) If a person or taxpayer in final return status effects a complete liquidation that is initiated and completed on the same date, then the franchise tax shall be computed utilizing net worth, or the minimum franchise tax base under § 67-4-2108, on the date immediately preceding the liquidating event; otherwise, on any return of a taxpayer in final return status, the franchise tax shall be computed by using the average monthly value of net worth or the average monthly value of the real and tangible property owned in Tennessee. Such average monthly value shall be determined by totaling the value of net worth as of the final day of each month of the tax period, or the book value of the real and tangible property owned in Tennessee as of the final day of each month of the tax period, and then dividing that total by the number of months in the tax period. In the event the taxpayer is part of an affiliated group that has elected to compute its net worth on a consolidated basis, such election shall not apply to the taxpayer while it is in final return status unless the entire affiliated group is in final return status during the same tax period, in which case the election shall continue to apply to the taxpayer.

SECTION 8. Tennessee Code Annotated, Section 67-4-2006(c), is amended by deleting the following language from the first paragraph of the subsection:

The taxpayer shall then deduct any loss carryovers, computed in accordance with subdivisions (c)(1)-(5), from its net earnings so determined.

and substituting instead the following language:

The taxpayer shall then deduct any loss carryovers, computed in accordance with this subsection (c), from its net earnings so determined.

and is further amended by adding the following language as a new subdivision (8):

(8)

(A)

(i) There shall be added to the net loss as determined for excise tax purposes the amount excluded from federal gross income under 26 U.S.C. § 108(a)(1)(A), (B), or (C) for the taxable year of the discharge.

(ii) There shall be added to any qualified net operating loss as determined for excise tax purposes and carried forward to the year of the discharge the amount excluded from federal gross income under 26 U.S.C. § 108(a)(1)(A), (B), or (C) allocable or apportionable to this state for the taxable year of the discharge.

(B) The adjustments described in subdivision (A) shall be made first in the loss for the taxable year of the discharge and then in the carryforwards to such taxable year in the order of the taxable years from which each such carryforward arose.

SECTION 9. Sections 1 - 7 of this act shall take effect upon becoming a law, the public welfare requiring it. Section 8 of this act shall take effect upon becoming a law and shall apply to any tax year in which a discharge of indebtedness occurred on or after October 1, 2013, the public welfare requiring it.